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(b)(1) Except as authorized under paragraph (b)(3) of this section, no officer or employee of the United States shall disclose commercial or financial information submitted under this Act if the information is privileged or confidential, and if disclosing the information would cause harm to the person who submitted it.

(2) A person submitting information shall designate the documents or information which it considers privileged or confidential and the disclosure of which would cause harm to the person submitting it. The Secretary shall endeavor to notify these persons of any requests or demands before disclosing any of this information.

(3) An officer or employee of the United States may disclose information covered under paragraph (b)(1) of this section only under the following circumstances—

(i) Upon a request made by either House of Congress or a Committee of the Congress,

(ii) In a judicial or administrative proceeding subject to issuance of an appropriate protective order,

(iii) With the written consent of the person who submitted the information,

(iv) When the Secretary considers disclosure of the information to be necessary for determining whether or not to issue, amend, or revoke a certificate, if—

(A) The Secretary determines that a non-confidential summary of the information is inadequate; and

(B) The person who submitted the information is informed of the intent to disclose the information, and has an opportunity to advise the Secretary of the potential harm which disclosure may cause,

(v) In accordance with any requirement imposed by a statute of the United States.

(c) In any judicial or administrative proceeding in which disclosure is sought from the Secretary or the Attorney General of any confidential or privileged documents or information submitted under this Act, the Secretary or Attorney General shall attempt to notify the party who submitted the information of the request or demand for disclosure. In appropriate circumstances the Secretary or

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Attorney General may seek or support an appropriate protective order on behalf of the party who submitted the documents or information.

§ 325.17 Waiver.

The Secretary may waive any of the provisions of this part in writing for good cause shown, if the Attorney General concurs and if permitted by law.

PART 335—IMPORTS OF WORSTED WOOL FABRIC

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AUTHORITY: Title V of the Trade and Development Act of 2000 (Public Law No. 106-200) as amended by Trade Act of 2002 and the Miscellaneous Trade Act of 2004 (Public Law 108-429), Presidential Proclamation No. 7383 (December 1, 2000).

SOURCE: 66 FR 6461, Jan. 22, 2001, unless otherwise noted.

§ 335.1 Purpose.

This part sets forth regulations regarding the issuance and effect of licenses for the allocation of Worsted Wool Fabric under the TRQs established by Section 501 of the Act, including the new HTS categories 9902.51.15 and 9902.51.16 added by the amended Act.

[70 FR 25777, May 16, 2005]

§ 335.2 Definitions.

For purposes of these regulations and the forms used to implement them:

The Act means the Trade and Development Act of 2000 (Public Law No. 106-200, 114 Stat 251).

The Department means the United States Department of Commerce.

HTS means the Harmonized Tariff Schedule of the United States.

Imports subject to Tariff Rate Quotas are defined by date of presentation as defined in 19 CFR 132.1(d) and 19 CFR 132.11(a).

Licensee means an applicant for an allocation of the Tariff Rate Quotas that receives an allocation and a license.

Production means cutting and sewing garments in the United States.

Tariff Rate Quota or Quotas means the temporary duty reduction provided under Section 501 of the Act for limited quantities of fabrics of worsted wool with average diameters greater than 18.5 micron, certified by the importer as suitable for use in making suits, suit-type jackets, or trousers (HTS heading 9902.51.11), and for limited quantities of fabrics of worsted wool with average diameters of 18.5 microns or less, certified by the importer as suitable for use in making suits, suit-type jackets, or trousers for the benefit of persons (including firms, corporations, or other legal entities) who cut and sew men's and boy's wool suits, suit-type jackets and trousers in the United States (HTS heading 9902.51.15), and worsted wool fabric with average fiber diameters of 18.5 microns or less for the benefit of persons (including firms, corporations, or other legal entities) who weave worsted wool fabric in the United States (HTS 9902.51.16).

Tariff Rate Quota Year means a calendar year for which the Tariff Rate Quotas are in effect.

Worsted Wool Fabric means fabric containing at least 85 percent by weight worsted wool.

Worsted Wool Suits means men's and boys' worsted wool suits, containing at least 85 percent by weight worsted wool fabric.

Worsted Wool Suit-Type Jackets mean men's and boys' worsted wool suit-type jackets, containing at least 85 percent by weight worsted wool fabric.

Worsted Wool Trousers means men's and boys' worsted wool trousers, containing at least 85 percent by weight worsted wool fabric.

[66 FR 6461, Jan. 22, 2001, as amended at 70 FR 25777, May 16, 2005]

§ 335.3 Applications to receive allocation.

(a) In each year prior to a Tariff Rate Quota Year, the Department will cause to be published a FEDERAL REGISTER notice soliciting applications to receive an allocation of the Tariff Rate Quotas.

(b) An application for a Tariff Rate Quota allocation must be received, or postmarked by the U.S. Postal Service,

within 30 calendar days after the date of publication of the FEDERAL REGISTER notice soliciting applications.

(c) For applying for TRQs 9902.51.11 or 9902.51.15 during the calendar year of the date of the application, an applicant must have cut and sewed in the United States all three of the following apparel products: Worsted Wool Suits, Worsted Wool Suit-Type Jackets, and Worsted Wool Trousers. The applicant may either have cut and sewn these products on its own behalf or had another person cut and sew the products on the applicant's behalf, provided the applicant owned the fabric at the time it was cut and sewn. The application must contain a statement to this effect. For applying for TRQ 9902.51.16 during the calendar year of the date of the application, an applicant must have woven in the United States worsted wool fabrics with average fiber diameters of 18.5 microns or less, suitable for use in making suits, suit-type jackets, and trousers. The application must contain a statement to this effect.

(d) An applicant must provide the following information in the format set forth in the application form provided by the Department:

(1) *Identification.* Applicant's name, address, telephone number, fax number, and federal tax identification number; name of person submitting the application, and title, or capacity in which the person is acting for the applicant.

(2)(i) *Production.* Applicants for TRQs 9902.51.11 and 9902.51.15 must provide the name and address of each plant or location where Worsted Wool Suits, Worsted Wool Suit-Type Jackets, and Worsted Wool Trousers were cut and sewn or woven by the applicant and the name and address of all plants or locations that cut and sewed such products on behalf of the applicant. Production data, including the following: the quantity and value of the Worsted Wool Suits, Worsted Wool Suit-Type Jackets, and Worsted Wool Trousers cut and sewn in the United States by applicant, or on behalf of applicant, from fabric owned by applicant. This data must indicate actual production (not estimates) of Worsted Wool Suits, Worsted Wool Suit-Type Jackets and Worsted Wool Trousers containing at least 85

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percent worsted wool fabric by weight with an average diameter of 18.5 microns or less. This data must also indicate actual production (not estimates) of Worsted Wool Suits, Worsted Wool Suit-Type Jackets and Worsted Wool Trousers containing at least 85 percent worsted wool fabric by weight with average diameter greater than 18.5 microns. Production data must be provided for the first six months of the year of the application. This data will be annualized for the purpose of making Tariff Rate Quota allocations.

(ii) Applicants for TRQ 9902.51.16 must provide the name and address of each plant or location where Worsted Wool Fabric was woven by the applicant. The quantity and value of the Worsted Wool Fabric woven in the United States by applicant. This data must indicate actual production (not estimates) of Worsted Wool Fabric containing at least 85 percent worsted wool fabric by weight with an average diameter of 18.5 microns or less. For applications for the 2005 Tariff Rate Quota year, production data must be provided for full calendar year 2004. For allocations of Tariff Rate Quota years after 2005, production data must be provided for the first six months of the year of the application. This data will be annualized for the purpose of making Tariff Rate Quota allocations.

(3) *Worsted Wool Fabric.* Data indicating the quantity and value of the Worsted Wool Fabric used in reported production.

(4) *Certification.* A statement by the applicant (if a natural person), or on behalf of applicant, by an employee, officer or agent, with personal knowledge of the matters set out in the application, certifying that the information contained therein is complete and accurate, signed and sworn before a Notary Public, and acknowledging that false representations to a federal agency may result in criminal penalties under federal law.

(e) *Confidentiality.* Any business confidential information provided pursuant to this section that is marked business confidential will be kept confidential and protected from disclosure to the full extent permitted by law.

(f) *Record Retention:* The applicant shall retain records substantiating the

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information provided in § 335.3(d)(2), (3), and (4) for a period of 3 years and the records must be made available upon request by an appropriate U.S. government official.

[66 FR 6461, Jan. 22, 2001, as amended at 70 FR 25777, May 16, 2005]

§ 335.4 Allocation.

(a) For HTS 9902.51.11 and HTS 9902.51.15 each Tariff Rate Quota will be allocated separately. Allocation will be based on an applicant's Worsted Wool Suit production, on a weighted average basis, and the proportion of imported Worsted Wool Fabric consumed in the production of Worsted Wool Suits. In regards to HTS 9902.51.16 the Tariff Rate Quota will be allocated based on an applicant's Worsted Wool Fabric production, on a weighted average basis.

(b) For the purpose of calculating allocations for HTS 9902.51.11 and HTS 9902.51.15 only, Worsted Wool Suit production will be increased by the percentage of imported fabric consumed in the production of Worsted Wool Suits to total fabric consumed in this production. For example, if an applicant uses 30 percent imported fabric in the production of Worsted Wool Suits, that applicant's production level will be increased by 30 percent.

(c) The Department will cause to be published in the FEDERAL REGISTER its determination to allocate the Tariff Rate Quotas and will notify applicants of their respective allocation as soon as possible. Promptly thereafter, the Department will issue licenses.

[66 FR 6461, Jan. 22, 2001, as amended at 70 FR 25777, May 16, 2005]

§ 335.5 Licenses.

(a) Each Licensee will receive a license, which will include a unique control number. The license is subject to the surrender and reallocation provisions in § 335.6.

(b) A license may be exercised only for fabric entered for consumption, or withdrawn from warehouse for consumption, during the Tariff Rate Quota Year specified in the license. A license will be debited on the basis of date of entry for consumption or withdrawal from warehouse for consumption.

(c) A Licensee may import fabric certified by the importer as suitable for use in making suits, suit-type jackets, or trousers under the appropriate Tariff Rate Quota as specified in the license (*i.e.*, under the Tariff Rate Quota for fabric of worsted wool with average fiber diameters greater than 18.5 micron or the Tariff Rate Quota for fabric of worsted wool with average fiber diameters of 18.5 micron or less) up to the quantity specified in the license subject to the Tariff Rate Quota duty rate. Only a Licensee or an importer authorized by a Licensee will be permitted to import fabric under the Tariff Rate Quotas and to receive the Tariff Rate Quota duty rate.

(d) The term of a license shall be the Tariff Rate Quota Year for which it is issued. Fabric may be entered or withdrawn from warehouse for consumption under a license only during the term of that license. The license cannot be used for fabric entered or withdrawn from warehouse for consumption after December 31 of the year of the term of the license.

(e) The importer of record of fabric entered or withdrawn from warehouse for consumption under a license must be the Licensee or an importer authorized by the Licensee to act on its behalf. If the importer of record is the Licensee, the importer must possess the license at the time of filing the entry summary or warehouse withdrawal for consumption (Customs Form 7501).

(f) A Licensee may only authorize an importer to import fabric under the license on its behalf by making such an authorization in writing or by electronic notice to the importer and providing a copy of such authorization to the Department. A Licensee may only withdraw authorization from an importer by notifying the importer, in writing or by electronic notice, and providing a copy to the Department.

(g) The written authorization must include the unique number of the license, must specifically cover the type of fabric imported, and must be in the possession of the importer at the time of filing the entry summary or warehouse withdrawal for consumption (Customs Form 7501), or its electronic equivalent, in order for the importer to

obtain the applicable Tariff Rate Quota duty rate.

(h) It is the responsibility of the Licensee to safeguard the use of the license issued. The Department and the U.S. Customs Service will not be liable for any unauthorized or improper use of the license.

§ 335.6 Surrender, reallocation and license utilization requirement.

(a) Not later than September 30 of each Tariff Rate Quota Year, a Licensee that will not import the full quantity granted in a license during the Tariff Rate Quota Year shall surrender the allocation that will not be used to the Department for purposes of reallocation through a written or electronic notice to the Department, including the license control number and the amount being surrendered. The surrender shall be final, and shall apply only to that Tariff Rate Quota Year.

(b) For purposes of this section, “unused allocation” means the amount by which the quantity set forth in a license, including any additional amount received pursuant to paragraph (d) of this section, exceeds the quantity entered under the license, excluding any amount surrendered pursuant to paragraph (a) of this section.

(c) The Department will notify Licensees of any amount surrendered and the application period for requests for reallocation. A Licensee that has imported, or intends to import, a quantity of Worsted Wool Fabric exceeding the quantity set forth in its license may apply to receive additional allocation from the amount to be reallocated. The application shall state the maximum amount of additional allocation the applicant will be able to use.

(d) The amount surrendered will be reallocated to Licensees that have applied for reallocation. The entire amount surrendered will be reallocated pro-rata among applicants based on the applicant's share of the annual allocation, but will not exceed the amount set forth in the reallocation application as the maximum amount able to be used.

(e) A Licensee whose unused allocation in a Tariff Rate Quota Year exceeds five percent of the quantity set forth in its license shall be subject to

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having its allocation reduced in the subsequent Tariff Rate Quota Year. The subsequent Tariff Rate Quota Year allocation will be reduced from the quantity such Licensee would otherwise have received by a quantity equal to 25 percent of its unused allocation from the prior year. A Licensee whose unused allocation in two or more consecutive Tariff Rate Quota Years exceeds five percent of the quantity set forth in its license shall have its allocation reduced in the subsequent Tariff

Rate Quota Year by a quantity equal to 50 percent of its unused allocation from the prior year.

(f) No penalty will be imposed under paragraph (e) of this section if the Licensee demonstrates to the satisfaction of the Department that the unused allocation resulted from breach by a carrier of its contract of carriage, breach by a supplier of its contract to supply the fabric, act of God, or force majeure.

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